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12 PERALTA COMMUNITY COLLEGE DISTRICT

13 UNITED STATES DISTRICT COURT

14 NORTHERN DISTRICT OF CALIFORNIA

15 JANICE PAYNE,

16 Plaintiff,

17 vs.

18 PERALTA COMMUNITY COLLEGE
19 DISTRICT; DOES 1 through 10,
20 inclusive,

21 Defendants.

Case No.: C08-03133 BZ

DEFENDANT PERALTA COMMUNITY
COLLEGE'S ANSWER TO COMPLAINT

22 Defendant, PERALTA COMMUNITY COLLEGE DISTRICT hereby submits the
23 following answer to plaintiff's Complaint.

24 **I. RESPONSE TO INTRODUCTION**

25 1. Answering Paragraph 1 of plaintiff's complaint, Defendant lacks sufficient
26 information as to plaintiff's allegations regarding her disabilities upon which to admit or
27 deny these allegations, and as such, these allegations are denied. Defendant is without
28 sufficient information and belief to determine plaintiff's purpose in bringing this action
and as such these allegations are denied. To the extent plaintiff is making legal
conclusions as opposed to statements of fact, these allegations are also denied.

1 Defendant admits that it owns and operates the Laney Campus. As for the balance of
2 the paragraph, Defendant denies each and every allegation contained therein.

3 2. Answering Paragraph 2, of plaintiff's complaint Defendant denies each and
4 every allegation contained therein.

5
6 **II. RESPONSE TO ALLEGATIONS REGARDING JURISDICTION**

7 3. Answering Paragraphs 3, 4 and 5, of plaintiff's complaint Defendant admits
8 that the Court has jurisdiction over this matter.

9 **III. RESPONSE TO ALLEGATIONS REGARDING VENUE**

10 4. Answering Paragraph 6, of plaintiff's complaint Defendant admits that the
11 Northern District is the proper venue for this dispute.

12 **IV. RESPONSE TO ALLEGATIONS REGARDING PARTIES**

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14 5. Answering Paragraph 7, of plaintiff's complaint, Defendant lacks sufficient
15 information as to plaintiff's allegations regarding her disabilities upon which to admit or
16 deny these allegations, and as such, these allegations are denied. Defendant is without
17 sufficient information and belief to determine plaintiff's purpose in bringing this action
18 and as such these allegations are denied. To the extent plaintiff is making legal
19 conclusions as opposed to statements of fact, these allegations are also denied.

20
21 6. Answering Paragraph 8 of plaintiff's complaint, to the extent plaintiff is making
22 legal conclusions as opposed to statements of fact, these allegations are also denied.
23 Defendant further denies that it and/or its employees have discriminated against the
24 plaintiff.

25 7. Answering Paragraph 9 of plaintiff's complaint, Defendant further denies that it
26 and/or its employees have discriminated against the plaintiff and as such denies any
27 common plan or joint venture to do so.

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V. RESPONSE TO ALLEGATIONS REGARDING GOVERNMENT CLAIM

8. Answering Paragraph 10 of plaintiff's complaint, Defendant admits that plaintiff filed a Government Claim and that it was denied by operation of law. However, Defendant does not concede that the Claim allegations were timely or that the complaint otherwise conforms with the claim and on that basis, denies the allegations.

VI. RESPONSE TO ALLEGATIONS REGARDING FACTUAL BASES OF COMPLAINT

9. Answering Paragraph 11, of plaintiff's complaint, Defendant admits that Plaintiff is a student at Laney College. Defendant lacks sufficient information as to plaintiff's allegations regarding her disabilities upon which to admit or deny these allegations, and as such, these allegations are denied. Defendant denies that it has denied plaintiff rights of access to its campus and facilities and otherwise denies that it has discriminated against the plaintiff. To the extent plaintiff is making legal conclusions as opposed to statements of fact, these allegations are also denied. Defendant further denies that it and/or its employees have discriminated against the plaintiff.

9. Answering Paragraphs 11 (A), (B), (C), (D), (E), (F), (G), (H) (I) of plaintiff's complaint, Defendant denies that on every occasion and/or on a daily basis that plaintiff has been denied rights of access to its campus and facilities. The Defendant denies that it has otherwise discriminated against the plaintiff. Defendant further answers that to the extent, if any, access barriers exist within the Laney Campus and to what extent remediation, if any, is necessary is subject to continuing review by the Defendant. Therefore, Defendant denies plaintiff's access and discrimination allegations on that basis. To the extent plaintiff is making legal conclusions as opposed to statements of fact, these allegations are also denied.

10. Answering Paragraph 11 (J) of plaintiff's complaint is without information and belief as to what investigation plaintiff's expert has done regarding the Laney Campus and therefore, on that basis denies the allegation in Paragraph 12. Defendant further answers that to the extent, if any, access barriers exist within the Laney Campus and to

1 what extent remediation, if any, is necessary is subject to continuing review by the
2 Defendant. Therefore, Defendant denies plaintiff's access and discrimination
3 allegations on that basis. To the extent plaintiff is making legal conclusions as opposed
4 to statements of fact, these allegations are also denied.

5 11. Answering Paragraph 12 of plaintiff's complaint, Defendant answers that to
6 the extent, if any, access barriers exist within the Laney Campus and to what extent
7 remediation, if any, is necessary is subject to continuing review by the Defendant.
8 Therefore, Defendant denies plaintiff's access and discrimination allegations on that
9 basis. To the extent plaintiff is making legal conclusions as opposed to statements of
10 fact, these allegations are also denied.

11 12. Answering Paragraph 13 of plaintiff's complaint, Defendants deny each and
12 every allegation contained therein.

13 **VII. RESPONSE TO FIRST CAUSE OF ACTION**

14 13. Answering Paragraph 14 of plaintiff's complaint, Defendant hereby
15 incorporates its answers to paragraphs 1 through 13 as though fully stated herein.

16 14. Answering Paragraph 15 of plaintiff's complaint, this paragraph contains
17 plaintiff's opinions regarding the law and as such is not a factual charging allegation.
18 Therefore, Defendant lacks sufficient information and belief upon which to admit or deny
19 these allegations, and as such, the allegations are denied.
20

21 15. Answering Paragraph 16 of plaintiff's complaint, Defendant answers that to
22 the extent, if any, access barriers exist within the Laney Campus and to what extent
23 remediation, if any, is necessary is subject to continuing review by the Defendant.
24 Therefore, Defendant denies plaintiff's access and discrimination allegations on that
25 basis.
26

27 16. Answering Paragraph 17 of plaintiff's complaint, Defendant denies each and
28 every allegation contained therein.

1 17. Answering Paragraph 18 of plaintiff's complaint, Defendant denies each and
2 every allegation contained therein.

3 18. Answering Paragraph 19 of plaintiff's complaint, Defendant denies that
4 plaintiff is entitled to injunctive relief.

5 19. Answering Paragraph 20 of plaintiff's complaint, Defendant denies that
6 plaintiff is entitled to damages, costs, expenses and/or attorneys' fees.
7

8 **VIII. RESPONSE TO SECOND CAUSE OF ACTION**

9 20. Answering Paragraph 21 of plaintiff's complaint, Defendant hereby
10 incorporates its answers to paragraphs 1 through 20 as though fully stated herein.

11 21. Answering Paragraph 22 of plaintiff's complaint, this paragraph contains
12 plaintiff's opinions regarding the law and as such is not a factual charging allegation.
13 Therefore, Defendant lacks sufficient information and belief upon which to admit or deny
14 these allegations, and as such, the allegations are denied. Defendant admits that it is
15 responsible for operating the Laney College Campus and admits that it has received
16 federal funding.
17

18 22. Answering Paragraph 23 of plaintiff's complaint, Defendant denies each and
19 every allegation contained therein.

20 23 Answering Paragraph 24 of plaintiff's complaint, Defendant denies that its
21 facilities, programs and services are inaccessible and as such, Defendant denies that
22 plaintiff or others have suffered irreparable harm.

23 24. Answering Paragraph 25 of plaintiff's complaint, Defendant denies that
24 plaintiff or others are entitled to injunctive relief requested.

25 25. Answering Paragraph 26 of plaintiff's complaint, Defendant denies that
26 plaintiff is entitled to damages, costs, expenses and/or attorneys' fees.
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IX. RESPONSE TO THIRD CAUSE OF ACTION

26. Answering Paragraph 27 of plaintiff's complaint, Defendant hereby incorporates its answers to paragraphs 1 through 26 as though fully stated herein.

27. Answering Paragraph 28 of plaintiff's complaint, this paragraph contains plaintiff's opinions regarding the law and as such is not a factual charging allegation. Therefore, Defendant lacks sufficient information and belief upon which to admit or deny these allegations, and as such, the allegations are denied.

28. Answering Paragraph 29 of plaintiff's complaint, this paragraph contains plaintiff's opinions regarding the law and as such is not a factual charging allegation. Therefore, Defendant lacks sufficient information and belief upon which to admit or deny these allegations, and as such, the allegations are denied.

29. Answering Paragraph 30 of plaintiff's complaint, Defendant denies each and every allegation contained therein.

30. Answering Paragraph 31 of plaintiff's complaint, this paragraph contains plaintiff's opinions regarding the law and as such is not a factual charging allegation. Therefore, Defendant lacks sufficient information and belief upon which to admit or deny these allegations, and as such, the allegations are denied.

31. Answering Paragraph 32 of plaintiff's complaint, Defendant denies that its facilities, programs and services are inaccessible and as such, Defendant denies that plaintiff or others have suffered irreparable harm.

32. Answering Paragraph 33 of plaintiff's complaint, Defendant denies that its facilities, programs and services are inaccessible and as such, Defendant denies that plaintiff or others are entitled to the relief demanded in said paragraph. To the extent the paragraph contains plaintiff's opinions regarding the law and as such is not a factual charging allegation. Therefore, Defendant lacks sufficient information and belief upon which to admit or deny these allegations, and as such, the allegations are denied.

1 Defendant further denies that plaintiff is entitled to recover damages as alleged.

2 33. Answering Paragraph 34 of plaintiff's complaint, Defendant denies that
3 plaintiff is entitled to damages and further denies that it has discriminated against the
4 plaintiff.

5 34. Answering Paragraph 35 of plaintiff's complaint, Defendant denies that
6 plaintiff is entitled to damages, attorneys' fees, expenses and costs and further denies
7 that it has discriminated against the plaintiff.
8

9 **X. RESPONSE TO FOURTH CAUSE OF ACTION**

10 35. Answering Paragraph 36 of plaintiff's complaint, Defendant hereby
11 incorporates its answers to paragraphs 1 through 35 as though fully stated herein.

12 36. Answering Paragraph 37 of plaintiff's complaint, this paragraph contains
13 plaintiff's opinions regarding the law and as such is not a factual charging allegation.
14 Therefore, Defendant lacks sufficient information and belief upon which to admit or deny
15 these allegations, and as such, the allegations are denied.
16

17 37. Answering Paragraph 38 of plaintiff's complaint, this paragraph contains
18 plaintiff's opinions regarding the law and as such is not a factual charging allegation.
19 Therefore, Defendant lacks sufficient information and belief upon which to admit or deny
20 these allegations, and as such, the allegations are denied.

21 38. Answering Paragraph 39 of plaintiff's complaint, to the extent this paragraph
22 contains plaintiff's opinions regarding the law and as such is not a factual charging
23 allegation. Therefore, Defendant lacks sufficient information and belief upon which to
24 admit or deny these allegations, and as such, the allegations are denied. Defendant
25 further denies that it has discriminated against the plaintiff and that she is entitled to any
26 relief.

27 39. Answering Paragraph 40 of plaintiff's complaint, this paragraph contains
28 plaintiff's opinions regarding the law and as such is not a factual charging allegation.

1 Therefore, Defendant lacks sufficient information and belief upon which to admit or deny
2 these allegations, and as such, the allegations are denied. Defendant denies that it has
3 discriminated against the plaintiff.

4 40. Answering Paragraph 41 of plaintiff's complaint, Defendant denies that its
5 facilities, programs and services are inaccessible and as such, Defendant denies that
6 plaintiff or others have suffered irreparable harm.

7 41. Answering Paragraph 42 of plaintiff's complaint, to the extent this paragraph
8 contains plaintiff's opinions regarding the law and as such is not a factual charging
9 allegation. Therefore, Defendant lacks sufficient information and belief upon which to
10 admit or deny these allegations, and as such, the allegations are denied. Defendant
11 further denies that it has discriminated against the plaintiff and that she is entitled to any
12 relief.

13 42. Answering Paragraph 43 of plaintiff's complaint, Defendant denies that
14 plaintiff is entitled to damages and further denies that it has discriminated against the
15 plaintiff.

16 43. Answering Paragraph 44 of plaintiff's complaint, Defendant denies that
17 plaintiff is entitled to damages, attorneys' fees, expenses and costs and further denies
18 that it has discriminated against the plaintiff.

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20 **XI. RESPONSE TO FIFTH CAUSE OF ACTION**

21 44. Answering Paragraph 45 of plaintiff's complaint, Defendant hereby
22 incorporates its answers to paragraphs 1 through 44 as though fully stated herein.

23 45. Answering Paragraph 46 of plaintiff's complaint, Defendant admits the
24 allegations contained therein.

25 46. Answering Paragraph 47 of plaintiff's complaint, o the extent this paragraph
26 contains plaintiff's opinions regarding the law and as such is not a factual charging
27 allegation. Therefore, Defendant lacks sufficient information and belief upon which to
28

1 admit or deny these allegations, and as such, the allegations are denied. Defendant
2 further denies that it has discriminated against the plaintiff and that she is entitled to any
3 relief.

4 47. Answering Paragraph 48 of plaintiff's complaint, Defendant denies the
5 allegations therein and denies that plaintiff or others are entitled to injunctive relief.

6
7 **XII. RESPONSE TO PRAYER FOR RELIEF**

8 48. Answering Plaintiff's prayer for relief, Defendant denies that plaintiff is
9 entitled to injunctive relief, denies that it has engaged in unlawful policies, practices,
10 acts and omissions, that plaintiff is entitled to have this Court retain jurisdiction, denies
11 that plaintiff is entitled to an award of damages, expenses, costs, prejudgment interest
12 and/or attorneys fees or to other such unspecified relief.

13 **XIII. AFFIRMATIVE DEFENSES**

14 49. AS A FIRST, SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE TO
15 PLAINTIFF'S COMPLAINT ON FILE HEREIN, Defendant alleges that neither the
16 Complaint nor any of the alleged causes of action therein state facts sufficient to
17 constitute a cause of action.

18 50. AS A SECOND, SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE TO
19 PLAINTIFF'S COMPLAINT ON FILE HEREIN, Defendant alleges that Plaintiff lacks
20 standing to maintain this action either for him or on behalf of the alleged class of
21 persons he purports to represent and the purported class fails to meet the requirements
22 for class certification or maintenance of a class action.

23 51. AS A THIRD, SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE TO
24 PLAINTIFF'S COMPLAINT ON FILE HEREIN, Defendant alleges that the Complaint is
25 barred in that the relief sought would require Defendant to alter fundamentally the
26 Defendant's services and programs.

27 52. AS A FOURTH, SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE TO
28 PLAINTIFF'S COMPLAINT ON FILE HEREIN, Defendant alleges that the Complaint is

1 barred in that the relief sought would place an undue financial and administrative
2 burden or hardship on the Defendant and would require unreasonable modifications to
3 programs and services.

4 53. AS A FIFTH, SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE TO
5 PLAINTIFF'S COMPLAINT ON FILE HEREIN, Defendant alleges that Plaintiff failed to
6 comply with the claim provisions of the California Governmental Code with respect to
7 the timely presentation of a Governmental Claim. Further, Plaintiff's claim, if submitted,
8 differs materially from the allegations contained within the Complaint, and as such, said
9 claims not referenced in the Governmental Claim are barred.

10 54. AS A SIXTH, SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE TO
11 PLAINTIFF'S COMPLAINT ON FILE HEREIN, Defendant alleges that the Complaint is
12 barred in that plaintiff seeks relief under the Civil Code Section 54 allegedly because of
13 acts or omissions of Defendant's employees who are not entities within the meaning of
14 that Section.

15 55. AS A SEVENTH, SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE TO
16 PLAINTIFF'S COMPLAINT ON FILE HEREIN, Defendant alleges that the Complaint is
17 barred because the CITY has a comprehensive system or plan which is effectively
18 providing appropriate services, programs and facilities to plaintiff and any purported
19 class.

20 56. AS AN EIGHTH, SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE TO
21 PLAINTIFF'S COMPLAINT ON FILE HEREIN, Defendant alleges that to the extent that
22 the Complaint alleges entitlement to services or programs that are not being provided,
23 plaintiff has failed to demonstrate, on her own behalf and on behalf of any purported
24 class, eligibility or entitlement to such programs or services.

25 57. AS A NINTH, SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE TO
26 PLAINTIFF'S COMPLAINT ON FILE HEREIN, Defendant alleges that the Complaint,
27 and each and every claim purportedly asserted therein, is barred by the applicable
28 statutes of limitations.

1 58. AS A TENTH, SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE TO
2 PLAINTIFF'S COMPLAINT ON FILE HEREIN, Defendant alleges that the Complaint,
3 and each and every claim purportedly asserted therein, is barred in that any recovery on
4 the Complaint, or any purported cause of action alleged therein, is barred because
5 Defendant's conduct was privileged and/or justified.

6 59. AS AN ELEVENTH, SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE
7 TO PLAINTIFF'S COMPLAINT ON FILE HEREIN, Defendant alleges that this Court
8 lacks jurisdiction over the subject matter of this action, which is to compel a reallocation
9 of taxpayer funds within a fixed and limited Defendant budget to favor a few citizens
10 over all other citizens on the basis of recommendations from indefinite and conflicting
11 professional judgments or standards or lay opinions.

12 60. AS A TWELVTH, SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE
13 TO PLAINTIFF'S COMPLAINT ON FILE HEREIN, Defendant alleges that the Complaint
14 is barred because Defendant are not required to make structural changes in existing
15 facilities where other methods are or would be effective to achieve compliance with
16 applicable law.

17 61. AS A THIRTEENTH, SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE
18 TO PLAINTIFF'S COMPLAINT ON FILE HEREIN, Defendant does not have any policy,
19 practice, procedure, regulation or intent to deny any plaintiff or alleged class member
20 any clearly established state or federal statutory or regulatory standard.

21 62. AS A FOURTEENTH, SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE
22 TO PLAINTIFF'S COMPLAINT ON FILE HEREIN, Defendant alleges that the Complaint
23 is barred in that the relief sought would inappropriately mandate the manner in which
24 Defendant allocates public funds in relation to existing programs and services.

25 63. AS A FIFTEENTH, SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE
26 TO PLAINTIFF'S UNVERIFIED COMPLAINT ON FILE HEREIN Defendant alleges that
27 the Complaint is moot because the Defendant has already taken all necessary steps to
28 comply with all applicable laws.

1 64. AS A SIXTEENTH, SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE
2 TO PLAINTIFF'S COMPLAINT ON FILE HEREIN Defendant alleges that the Complaint
3 is barred in that the relief sought would inappropriately required Defendant to allocate
4 resources, a political judgment, outside the purview of the court's authority.

5 65. AS A SEVENTH, SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE TO
6 PLAINTIFF'S COMPLAINT ON FILE HEREIN Defendant alleges that the Complaint is
7 barred because plaintiffs inappropriately seek to predicate their claims on Defendant's
8 allegedly improper allocation of public funds.

9 66. AS AN EIGHTEENTH, SEPARATE AND DISTINCT AFFIRMATIVE
10 DEFENSE TO PLAINTIFF'S COMPLAINT ON FILE HEREIN Defendant alleges that the
11 complaint is barred because Defendant is not required to make modifications that are
12 structurally impracticable.

13 67. AS A NINETEENTH, SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE
14 TO PLAINTIFF'S COMPLAINT ON FILE HEREIN Defendant alleges that the complaint
15 is barred because Defendant is not required to make the requested modifications to
16 historic structures.

17 68. AS A TWENTIETH, SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE
18 TO PLAINTIFF'S COMPLAINT ON FILE HEREIN Defendant alleges that the Complaint
19 is barred because plaintiffs have failed to request either reasonable accommodation or
20 auxiliary aid(s) as contemplated by all applicable laws.

21 69. AS A TWENTY-FIRST, SEPARATE AND DISTINCT AFFIRMATIVE
22 DEFENSE TO PLAINTIFF'S COMPLAINT ON FILE HEREIN Defendant alleges that to
23 the extent the Complaint alleges violations of law, those alleged violations are not the
24 result of the conduct or omissions of Defendant, nor can those alleged violations be
25 attributed to Defendant.

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1 70. AS A TWENTY-SECOND, SEPARATE AND DISTINCT AFFIRMATIVE
2 DEFENSE TO PLAINTIFF'S COMPLAINT ON FILE HEREIN Defendant alleges that the
3 Complaint, and each and every claim purportedly asserted therein, is barred in whole or
4 in part by Plaintiff's failure to mitigate damages.

5 71. AS A TWENTY-THIRD, SEPARATE AND DISTINCT AFFIRMATIVE
6 DEFENSE TO PLAINTIFF'S UNVERIFIED COMPLAINT ON FILE HEREIN, Defendant
7 alleges and avers that they are immune from the allegations and causes of action
8 contained within the Plaintiff's Complaint for damages based on the discretionary
9 immunities provisions contained within the California Government Code, including but
10 not limited to Sections 818.8, 820.2, 820.8, 820.9, 821.6, 822.2 and Civil Code § 47.


11 72. AS A TWENTY-FOURTH, SEPARATE AND DISTINCT AFFIRMATIVE
12 DEFENSE TO PLAINTIFF'S UNVERIFIED COMPLAINT ON FILE HEREIN, Defendant
13 alleges that its' investigation into the issues raised in the Complaint is at the preliminary
14 stages, and therefore Defendant reserves the right to amend its Answer to add further
15 affirmative defenses when such are discovered.

16 **PRAYER**

17 WHEREFORE, Defendant prays that Plaintiff takes nothing by his Complaint and
18 that Defendant be dismissed and awarded its costs of suit incurred herein and such
19 other and further relief as the Court deems fit and proper.

20 Dated: August 8, 2008

STUBBS & LEONE

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23 By: 
24 CLAUDIA LEED, ESQ.

Attorney for Defendant

PERALTA COMMUNITY COLLEGE DISTRICT